

**REMARKS:**

Applicant respectfully submits the following remarks with regard to the pending Office action.

Reconsideration and allowance are requested.

**REJECTION UNDER 35 U.S.C. § 103(a):**

Claim 1, 2 and 6 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO 93/01065 in view of Erban ('622).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

A determination under 35 U.S.C. §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. In re Mayne, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. Graham v. John Deere Co., 383 U.S. 1, 17 18, 148 USPQ 459, 467 (1966), see also Robotic Vision Sys., Inc. v. View Eng'g Inc., 189 F.3d 1370, 1376, 51 USPQ 2d 1948, 1953 (Fed. Cir. 1999).

In line with this standard, case law provides that "the consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." In re Dow Chem., 837 F.2d 469, 473, 5 USPQ 2d 1529, 1531 (Fed. Cir. 1988). The first requirement is that a showing of a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." In re Dembiczak, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617. The second requirement is that the

ultimate determination of obviousness must be based on a reasonable expectation of success. In re O'Farrell, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988); see also In re Longi, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

The examiner has the burden of establishing a prima facie case of obviousness. In re Deuel, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). The burden to rebut a rejection of obviousness does not arise until a prima facie case has been established. In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993). Only if the burden of establishing a prima facie case is met does the burden of coming forward with rebuttal argument or evidence shift to the applicant. In re Deuel, 51 F.3d 1552, 1553, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995), see also Ex parte Obukowicz, 27 USPQ 2d 1063, 1065 (B.P.A.I. 1992).

WO 93/01065 ('065) discloses, in claim 1, an "arrangement for controlling a differential lock in a vehicle transmission (3) connected to an engine (2), having a switch (9) for initiating engagement of the differential lock (8), and at least one solenoid valve (10) incorporated in a pressure medium operating servo system for engagement of the differential lock (8), characterized in that an electrical control unit (14) is connected to be activated by the switch (9) and is designed to activate the solenoid valve (10), that the control unit (14) is connected to an engine control unit (6) which actuates the acceleration of the engine (2), and that the control unit (14) incorporates a time delay circuit (25) which transmits an output signal for activating the solenoid valve (10) for a certain time (t) after an output signal has been transmitted to the engine control unit for reducing the acceleration of the engine." (Emphasis added).

Erban ('622) discloses, as the Examiner cites, an engine (14) associated with paired sets of wheels (10), a differential (11, 13) arranged between the paired drive wheels of a set and including a differential locking function through brakes (via 20) for braking speed difference between the wheels, a control unit (15) configured to control the engine to reduce output torque or engine speed to a viable or manageable level. (Emphasis added).

Applicant teaches, in Claim 1, “(a)n arrangement in an engine-driven goods vehicle comprising: an engine drivingly associated with paired sets of drive wheels (9, 10 and 51, 52); a differential (5, 6, 45, 46, 47) arranged between the paired drive wheels (9, 10 and 51, 52) of a set and including differential locks (7, 8, 48, 49, 50) for locking and braking respective differentials (5, 6, 45, 46, 47); and a control unit (3) configured to control the engine and the differential lock (7, 8, 48, 49, 50) and reduce positive and negative output torque of the engine (1) to a maximum allowable torque level, after having receiving an input signal indicating that at least one differential lock (7, 8, 48, 49, 50) is activated.” (Emphasis added).

Applicant respectfully submits that ‘065 discloses a system “activated by the switch (9)” that “actuates the acceleration of the engine” for “reducing the acceleration of the engine”. In contrast, Applicant teaches a system that automatically “controlling output torque from an engine” and further that the system “read(s) off which of said differential lock is activated and to reduce positive or negative torque to a maximum allowable predetermined torque level.” Applicant’s invention achieves the “maximum allowable predetermined torque level”, which is distinct from ‘065’s “reduced acceleration of the engine”. Applicant’s invention is directed to preventing damage to the vehicle’s differentials by providing an automatic system that requires no input from the driver. In ‘065, the driver must activate a switch to engage the system, and the engine speed is reduced without regard to maintaining a maximum allowable torque level.

Further, in Erban, a system is disclosed that utilizes the vehicle’s wheel brakes and an engine speed/torque control unit to prevent wheel slippage. Applicant’s system, in contrast, does not use the vehicle’s brakes, and is also directed toward protection of the differentials, which can be damaged when a value above the maximum allowable value is inputted through the drive system, and is automatic, eliminating the distraction to the driver regarding concern over differential damage.

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In view of the above, Applicant submits that the requirement and burden of presenting of a prima facie case of obviousness under 35 USC §103 has not been presented. Therefore Applicant requests the reconsideration and withdrawal of the rejection of Claims \*\* under 35 USC §103 and that the Examiner indicate the allowance of the claims in the next paper from the Office.

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The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, Order No. 7589.193.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner should directly contact the undersigned by phone to further the discussion.

Respectfully submitted,



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